FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL W.P. NO.2015 OF 2005

Shri. Y.H. Palkar. ....Petitioner.

Vs.

Liyakat Yasin Palkar and anr. ....Respondents.

Ms.Rupali Pawar i/by P.J. Pawar for the petitioner.

Mr.L.S.Gaikwad for the Respondent No.1.

Mr. A.S. Shitole, APP. for the State.

CORAM : R.S. MOHITE,J.
DATED : 23/2/2006.

P.C.

1. Heard both sides.

2. Rule, By consent, rule made returnable forthwith.

3. The present writ petition impugns an order dated 23.11.2004 passed by the Addl. Sessions Judge, Karad allowing the criminal revision application No. 50 of 2004 and setting aside an order dated 26.7.2004 passed by the J.M.F.C. Karad.

4. The brief facts of the case are that the present petitioner who is the father of respondent No.1 and his wife Khudijabai who is the mother of respondent No.1 filed separate proceedings under Section 125 of the Cr.P.C. for maintenance. Both these petitions are allowed and both the parents were given Rs.600/- as maintenance by the J.M.F.C. Admittedly, those orders have become final.

5. As the maintenance was not paid the parents filed two separation applications for recovery of maintenance being Misc. Application No.170/2004 and 171/2004 in the court of J.M.F.C. Karad and the J.M.F.C. Karad allowed those applications. The son of the petitioner filed separate revision application before the District & Sessions Judge, Karad bearing Criminal Revision Application No.50/2004 and one another. The Sessions Court allowed the said revision by judgment and order dated 23.11.2004. The ground on which the revision applications were allowed was that the parents had made certain admissions in the earlier recovery proceedings which had been withdrawn.

6. The mother of the respondent No.1 preferred Criminal W.P. No.521/2005 and by order dated 19.8.2005 this court disposed of the said petition by a speaking order. By judgment and order given by this court in the said writ petition the order dated 23.11.2004 passed by the Sessions Judge, Karad was quashed and set aside and the recovery application filed by the petitioner being Application No.171/2004 was restored with the directions that the same would be decided by the court according to law in the light of the observations made in the judgment. Liberty was given to the respondent No.1 to make an application under Section 127 of the Cr.P.C.. The finding of this court was to the effect that 125 proceeding had become final and in the circumstances, second recovery petition was maintainable notwithstanding the admissions recorded in the earlier recovery petition. In my view, the present petition will required to be disposed of in the same terms. I therefore, pass the following order.

i) The impugned judgment and order dated 23.11.2004 passed in C.R.A.No. 50/2004 is

quashed and set aside. The recovery application filed by the petitioner being Application No.170/2004 is restored and the same will be decided by the trial court in accordance with law in the light of the observations made in this judgment.

ii) This order will not prevent respondent No.1 from making an application under Section 127 of the Code of Criminal Procedure, 1973.

iii) Rule is made absolute in the aforesaid terms.

iv) No order as to costs.

v) C.C. expedited.

(R. S.MOHITE, J.)